



February 8, 2001

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2001-0490

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144027.

The Department of Transportation (the "department") received a request for "any comp. value on the Little York corridor and appraisal value of the property on Little York between the Hardy Toll Road and US Hwy 59." You claim that the requested information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. You have provided responsive materials, consisting of several forms, each designated D-15-2, and titled "REAL ESTATE APPRAISAL REPORT," and two additional pages identified as "ACTIVE FUNDS AUTHORIZATIONS AND PROJECT PLANNING SCHEDULE" and "DETAILED PARCEL STATUS." We have considered the exceptions you claim and reviewed the submitted information.

Section 552.022 of the Government Code lists several categories of information that cannot be withheld on the basis of a permissive exception to disclosure. In pertinent part this section provides:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108.

You assert that the submitted D-15-2 forms are not “completed reports” as that term is contemplated in section 552.022(a)(1) of the Government Code. In arguing that these forms are not “reports” you relate that they “[are] not based on the formal collection of facts, nor [do they] contain detailed findings.” However, from our review of these documents, we note that each of the submitted D-15-2 forms is titled “Real Estate Appraisal Report.” You also refer to these forms in your request for ruling as “appraisal reports.” More importantly, we note that each form includes a certification by the appraiser of the appraised dollar value of the property on a date certain. In addition, the appraiser certified on each of these forms that his conclusion was “based upon my independent appraisal and the exercise of my professional judgment.”

In support of your contention the submitted D-15-2 forms are not completed, you assert, “an appraisal is not ‘complete’ until the project for which it was prepared is concluded.” You assert no authority for this proposition, and we are aware of none. You also indicate that such appraisals “[are] inherently preliminary and tentative, and [they are] always subject to change based on the receipt of new information.” The fact that the project for which these appraisal reports was prepared has not concluded has no bearing on whether the appraisal reports themselves are complete.

Therefore, based on your comments and our review of the submitted forms, we conclude that the submitted D-15-2 forms are completed reports, subject to section 552.022(a)(1) of the Government Code. Permissive exceptions, such as section 552.103 or 552.105 of the Government Code, do not make information “expressly confidential under other law.” See Open Records Decision Nos. 522 (1989), 473 (1987). For this reason, the submitted D-15-2 forms must be released.

Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103. To determine that the information relates to the anticipated or pending litigation, we follow the rule that “ordinarily, the words ‘related to’ mean ‘pertaining to,’ ‘associated with’ or ‘connected with.’” *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.).

Here, you indicate that department has initiated a condemnation proceeding regarding the subject parcel of land. You have provided the original petition in this pending lawsuit. Therefore you have established that the responsive information is subject to section 552.103.

However, absent special circumstances, where the opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We conclude that you may withhold the portion of the submitted information identified as ACTIVE FUNDS AUTHORIZATIONS AND PROJECT PLANNING SCHEDULE" and "DETAILED PARCEL STATUS," under section 552.103 during the pendency of this litigation.

As the above discussion resolves this request, we do not address your argument raised under section 552.105 of the Government Code. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

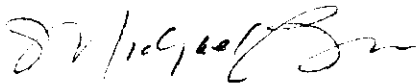
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 144027

Encl: Submitted documents

cc: Mr. Peter Jan Larsen
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Houston, Texas 77032
(w/o enclosures)